

SENATE BILL 139

E2

4lr0488

By: **Senator Conway**

Introduced and read first time: January 10, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Misdemeanor and Felony Convictions**

3 FOR the purpose of authorizing a certain person to file a certain petition for
4 expungement of a certain record if the person was convicted of a certain
5 misdemeanor or a certain felony; specifying the time periods within which a
6 petition for expungement based on a conviction of a certain misdemeanor or a
7 certain felony may not be filed; making a conforming change; and generally
8 relating to expungement of criminal records.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 10–105
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2013 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Criminal Procedure**

17 10–105.

18 (a) A person who has been charged with the commission of a crime, including
19 a violation of the Transportation Article for which a term of imprisonment may be
20 imposed, or who has been charged with a civil offense or infraction, except a juvenile
21 offense, as a substitute for a criminal charge may file a petition listing relevant facts
22 for expungement of a police record, court record, or other record maintained by the
23 State or a political subdivision of the State if:

24 (1) the person is acquitted;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) the charge is otherwise dismissed;

2 (3) a probation before judgment is entered, unless the person is
3 charged with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5
4 or § 3–211 of the Criminal Law Article;

5 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
6 alcohol treatment is entered;

7 (5) the court indefinitely postpones trial of a criminal charge by
8 marking the criminal charge “stet” or stet with the requirement of drug or alcohol
9 abuse treatment on the docket;

10 (6) the case is compromised under § 3–207 of the Criminal Law
11 Article;

12 (7) the charge was transferred to the juvenile court under § 4–202 of
13 this article;

14 (8) the person:

15 (i) is convicted of only one criminal act, and that act is not a
16 crime of violence; and

17 (ii) is granted a full and unconditional pardon by the Governor;

18 (9) the person was convicted of a crime or found not criminally
19 responsible under any State or local law that prohibits:

20 (i) urination or defecation in a public place;

21 (ii) panhandling or soliciting money;

22 (iii) drinking an alcoholic beverage in a public place;

23 (iv) obstructing the free passage of another in a public place or a
24 public conveyance;

25 (v) sleeping on or in park structures, such as benches or
26 doorways;

27 (vi) loitering;

28 (vii) vagrancy;

29 (viii) riding a transit vehicle without paying the applicable fare or
30 exhibiting proof of payment; or

1 (ix) except for carrying or possessing an explosive, acid,
2 concealed weapon, or other dangerous article as provided in § 7-705(b)(6) of the
3 Transportation Article, any of the acts specified in § 7-705 of the Transportation
4 Article; [or]

5 (10) the person was found not criminally responsible under any State or
6 local law that prohibits misdemeanor:

7 (i) trespass;

8 (ii) disturbing the peace; or

9 (iii) telephone misuse;

10 **(11) THE PERSON WAS CONVICTED OF A MISDEMEANOR OTHER**
11 **THAN A MISDEMEANOR LISTED IN ITEM (9) OF THIS SUBSECTION; OR**

12 **(12) THE PERSON WAS CONVICTED OF A FELONY OTHER THAN:**

13 **(I) MURDER;**

14 **(II) RAPE;**

15 **(III) SEXUAL OFFENSE IN THE FIRST DEGREE;**

16 **(IV) SEXUAL OFFENSE IN THE SECOND DEGREE;**

17 **(V) SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE**
18 **CRIMINAL LAW ARTICLE;**

19 **(VI) KIDNAPPING; OR**

20 **(VII) CONTINUING COURSE OF CONDUCT WITH A CHILD**
21 **UNDER § 3-315 OF THE CRIMINAL LAW ARTICLE.**

22 (a-1) A person's attorney or personal representative may file a petition, on
23 behalf of the person, for expungement under this section if the person died before
24 disposition of the charge by nolle prosequi or dismissal.

25 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
26 person shall file a petition in the court in which the proceeding began.

1 (2) If the proceeding began in one court and was transferred to
2 another court, the person shall file the petition in the court to which the proceeding
3 was transferred.

4 (3) (i) If the proceeding in a court of original jurisdiction was
5 appealed to a court exercising appellate jurisdiction, the person shall file the petition
6 in the appellate court.

7 (ii) The appellate court may remand the matter to the court of
8 original jurisdiction.

9 (c) (1) Except as provided in paragraph (2) of this subsection, a petition
10 for expungement based on an acquittal, a nolle prosequi, or a dismissal may not be
11 filed within 3 years after the disposition, unless the petitioner files with the petition a
12 written general waiver and release of all the petitioner's tort claims arising from the
13 charge.

14 (2) A petition for expungement based on a probation before judgment
15 or a stet with the requirement of drug or alcohol abuse treatment may not be filed
16 earlier than the later of:

17 (i) the date the petitioner was discharged from probation or the
18 requirements of obtaining drug or alcohol abuse treatment were completed; or

19 (ii) 3 years after the probation was granted or stet with the
20 requirement of drug or alcohol abuse treatment was entered on the docket.

21 (3) A petition for expungement based on a nolle prosequi with the
22 requirement of drug or alcohol treatment may not be filed until the completion of the
23 required treatment.

24 (4) A petition for expungement based on a full and unconditional
25 pardon by the Governor may not be filed later than 10 years after the pardon was
26 signed by the Governor.

27 (5) Except as provided in paragraph (2) of this subsection, a petition
28 for expungement based on a stet or a compromise under § 3–207 of the Criminal Law
29 Article may not be filed within 3 years after the stet or compromise.

30 (6) A petition for expungement based on the conviction of a crime
31 under subsection (a)(9) of this section may not be filed within 3 years after the
32 conviction or satisfactory completion of the sentence, including probation, that was
33 imposed for the conviction, whichever is later.

34 (7) A petition for expungement based on a finding of not criminally
35 responsible under subsection (a)(9) or (10) of this section may not be filed within 3
36 years after the finding of not criminally responsible was made by the court.

1 **(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION**
2 **OF A MISDEMEANOR UNDER SUBSECTION (A)(11) OF THIS SECTION MAY NOT BE**
3 **FILED WITHIN 7 YEARS AFTER THE CONVICTION OR SATISFACTORY**
4 **COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED**
5 **FOR THE CONVICTION, WHICHEVER IS LATER.**

6 **(9) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION**
7 **OF A FELONY UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE FILED**
8 **WITHIN 12 YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF**
9 **THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE**
10 **CONVICTION, WHICHEVER IS LATER.**

11 **[(8)] (10)** A court may grant a petition for expungement at any time
12 on a showing of good cause.

13 (d) (1) The court shall have a copy of a petition for expungement served
14 on the State's Attorney.

15 (2) Unless the State's Attorney files an objection to the petition for
16 expungement within 30 days after the petition is served, the court shall pass an order
17 requiring the expungement of all police records and court records about the charge.

18 (e) (1) If the State's Attorney files a timely objection to the petition, the
19 court shall hold a hearing.

20 (2) If the court at the hearing finds that the person is entitled to
21 expungement, the court shall order the expungement of all police records and court
22 records about the charge.

23 (3) If the court finds that the person is not entitled to expungement,
24 the court shall deny the petition.

25 (4) The person is not entitled to expungement if:

26 (i) the petition is based on the entry of probation before
27 judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of
28 drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
29 treatment, a conviction for a crime [specified in subsection (a)(9) of this section], a
30 finding of not criminally responsible, or the grant of a pardon by the Governor; and

31 (ii) the person:

32 1. since the full and unconditional pardon, entry, finding
33 of not criminally responsible, or conviction has been convicted of a crime other than a
34 minor traffic violation; or

